

ZONING BOARD OF APPEALS
MEETING MINUTES
September 13, 2011
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:06 P.M.

ATTENDANCE:

Members Present: Deland Davis James Moreno
Greg Dunn Carlyle Sims
Mike Fatt John Stetler

Members Excused: Becky Squires

Staff Present: Christine Hilton, Planning Supervisor
Jill Steele, Deputy City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

CORRESPONDANCE: None

OLD BUSINESS:

A) **Appeal #Z-02-11: (Parcel #2550-00-013-0 Upton Avenue)** Petition from Adams Outdoor Advertising, Mr. William B. Jackson, Real Estate Manager, 407 Ransom, Kalamazoo, MI 49007. First request is an appeal of Planning Staff determination for replacement of billboard sign; and pending their decision, a request for a variance to allow for a billboard sign to be reconstructed. Parcel is zoned "C-3 Intensive Business District" and commonly known as vacant lot on Upton Avenue, Parcel #2550-00-013-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1296.28(e) & 1296.39(f).

Mr. John Stetler asked if there was anyone present representing this appeal. (No one was present)

It was noted that the Planning Department has not heard from petitioner; suggested the board make a motion to adjourn until the next meeting.

Mr. Carlyle Sims asked how long can this appeal be postponed. Ms. Christine Hilton stated they will be contacting the petitioner and possibly request that they resubmit their appeal if necessary.

MOTION: MR. JAMES MORENO MADE A MOTION TO ADJOURN APPEAL #Z-02-11 UNTIL THE NEXT ZONING BOARD MEETING; SUPPORTED BY MR. CARLYLE SIMS.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, **MOTION APPROVED.**

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

NEW BUSINESS:

A. **Appeal #Z-09-11:** Petition from Mr. Jeff E. Spanninga, 9910 8 Mile Road, Ceresco, MI 49033. Request is for a dimensional variance to allow an accessory building damaged by storm to be reconstructed in the same location but larger in a front-yard on lake property. Parcel is zoned "R-1B Single Family Residential District" located at 600 Jennings Landing, Parcel #9610-25-031-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1286.05.

Mr. John Stetler asked Ms. Jill Steele, City Deputy Attorney if he would need to abstain from this appeal as he might have a conflict of interest because his company had submitted a bid for this construction, which had not been accepted.

Ms. Jill Steele stated in looking at the by-laws; she suggest that it be noted for the record and did not believe it would be a conflict of interest.

Mr. Glenn Perian, Senior Planner outlined the report stating this is a petition from Mr. Jeff Spanninga seeking a dimensional variance to construct a storage building in a front, street side, yard on lakefront property at 600 Jennings Landing. The property is located in a residential zoning district. Chapter 1286.05 of the zoning ordinance states that parcels having frontage on a lake shall be allowed an accessory building on the water front-yard providing that it meets the front and side-yard setback requirements for the main residential building. However, because the property slopes approximately 20ft. from the rear of the home to the lake, the Appellant is requesting to locate the accessory building in the street side front-yard, 8ft. from the side-yard and 133ft. from the street-front property line as shown on the handout. Stated the Planning staff is recommending approval of appeal #Z-9-11 to place an accessory building in the street-side front-yard based on the practical difficulties associated with the slope of the lake side-yard at 600 Jennings Landing. Construction in the lake side-yard is virtually impossible. Staff is not recommending approval for any size or height variance in this case. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act.

Noted for this Nonuse (dimensional) Variance:

- A) Staff finds that practical difficulty will in fact exist if the strict requirement of the Ordinance is applied and that the Board is authorized to grant a variance in this case. Staff believes that the practical difficulty associated with the severe slope of the lot in the lakeside yard presents substantially more than a mere inconvenience in this case.
- B) Staff believes that the practical difficulty associated with the severe slope of the property is exceptional and peculiar to the subject parcel and does not generally exist throughout the City. The slope of the land is not self created and because the ordinance allows for accessory buildings on residentially zoned property, staff does not believe the lot could accommodate an accessory building in the location that the ordinance allows.

- C) Staff does not believe that if the variance is granted that the intent of the ordinance will be altered or that the rights of others will be compromised.
- D) Staff believes that the variance requested is the minimum necessary to provide relief from the practical difficulty of the severe slope of the lakeside front-yard.

Mr. Jeff Spanninga, 9910 8 Mile Road, Ceresco, MI came forward to speak on behalf of his appeal; stated this was a family owned home and that the garage was damaged due to the severe storm.

Mr. Carlyle Sims asked if he had discussed the new construction with his neighbors. Mr. Spanninga stated, yes he had and noted his property is directly adjacent to the park to the north with very few neighbors. Stated everyone in his neighborhood lost many trees and does not understand why the city would have an ordinance that would not allow him to rebuild his garage.

Mr. Greg Dunn stated that the Zoning Board does not make the ordinances and that they try to fulfill the guidelines of the ordinance as written and that he does see he has exceptional circumstances.

Mr. Spanninga stated he had spoken to Mr. Nelson Karre, who had explained to him that the city ordinance was set-up for the masses.

Mr. Mike Fatt asked Mr. Spanninga, if he understands correctly, that he does not occupy this residence. Mr. Spanninga stated this property is family owned and that they occupy it for the holidays, summertime, and when any of the family members come to town to visit it allows them to have a private place to stay without needing to intrude on other family members.

Mr. Mike Fatt asked Mr. Perian if this building met the height restrictions. Mr. Perian stated his understanding is that the height is under the 14 ft. restriction and also the square footage is within the ordinance guidelines.

Mr. Fatt asked if the building met the guidelines for the ordinance. Mr. Perian stated yes.

Mr. James Moreno asked if staff agrees with the requested size of new building and if it would be non-conforming. Mr. Perian stated because the old garage was destroyed completely and is now gone, the new structure would be built within ordinance guidelines.

Mr. Greg Dunn asked if appellant would only need a variance for the front-yard. Mr. Perian stated yes, that is correct.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE APPEAL #Z-09-11 FOR A VARIANCE TO ALLOW CONSTRUCTION OF A DETACHED ACCESSORY BUILDING TO BE BUILT IN A FRONT-YARD AS REQUESTED ON THEIR APPLICATION; SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. Greg Dunn stated he sees there is a practical difficulty because of the severe slope of the lot in the lakeside yard and noted he would be voting in favor of this appeal.

Mr. John Stetler stated he feels this appeal should be approved because of the reasons noted in the staff report and is in agreement with that report.

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE
A VOTE WAS TAKEN; FIVE IN FAVOR (DAVIS, DUNN, FATT, SIMS, & STETLER);
ONE OPPOSED (MORENO), MOTION APPROVED.**

- B. **Appeal #Z-10-11:** Petition from Jerald & Kathy Montague, 32 W. Bidwell Street, Battle Creek, MI 49015. Request is for a dimensional variance to allow construction of an addition to existing garage that would exceed 10% of lot area; exceed 50% of the rear-yard; exceed 30% of max building coverage for lot; and exceed 1,500 sq. ft. max size allowed. Parcel is zoned "R-1C Single Family Residential District" located at 32 W. Bidwell Street.

Mr. Glenn Perian, Senior Planner outlined the report stating Appeal #Z-10-11 is a petition from Jerry and Kathy Montague seeking a dimensional variance to construct a 1,428 sq. ft. addition to an existing 308 sq. ft. detached accessory building at 32 W. Bidwell Street. The property is located in an R-1C residential zoning district and the 40ft. lot does not meet the 50ft. width requirement for the R-1C district. If the variance is granted the building would exceed the 10% maximum of the total lot area in size for an accessory building, exceed 50% of the rear lot coverage, 30% of the total lot coverage and exceed the maximum size of 1,500 sq. feet for an accessory building. The Appellant would be allowed an addition of 222 sq. ft. to the existing building and still be in compliance with the zoning code.

Planning Staff is recommending denial of appeal #Z-10-11 for the construction of a 1,428 sq. ft. addition to the existing accessory building at 32 W. Bidwell Street.

For this Nonuse (dimensional) Variance:

- A) Staff believes that the practical difficulty associated with this request does not include substantially more than a mere inconvenience in this case in that the lot will be overbuilt with the addition by exceeding the total lot coverage and rear yard coverage for lots in the R-1C zone.
- B) Staff believes that the practical difficulty associated with this request is self created. The ordinance allows for accessory buildings on residentially zoned property and if more space is needed, 222 sq. ft. could be added to the existing building and the property would be in compliance with ordinance standards.
- C) Staff believes that this variance request will alter or conflict with the intent of the ordinance considering the public benefits to be secured by the zoning code.
- D) Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the Applicant. In this case, staff does not believe the test for practical difficulty associated to the property has been met by the appellant.

Mr. Jerald Montague came forward to speak regarding his appeal, stated it was practical for him for is tools and cars to be safe and secure. Stated that he had looked for another home, but decided this was not a good time because of the economy and having his current home almost paid off.

Mr. James Moreno asked Mr. Montague if he was aware he could add 230 sq. ft. to existing garage without needing a variance. Mr. Montague stated in the past he had pulled a permit for a two car garage but had not built the garage.

Mr. Greg Dunn said he understood the need for safety of their property but the zoning board was not allowed to consider a variance for economical need and that once a variance has been granted it stays with the property. Stated how can they differentiate between other persons requesting the same; they cannot approve a variance on the basis that someone else has what they are requesting. Noted they need to have a hardship or practical difficulty.

Mr. Montague stated he understands it is self created, but will almost have his property paid for and he knows that in the area others have built over their lot size.

Mr. Dunn stated they need to look at the zoning boards standards that need to be followed.

Mr. Joel Fulton, 28 E. Bidwell Street, came forward to speak and said he is the neighbor that is directly adjacent to the petitioner. Stated it is hard to find a good neighbor and that Mr. Montague is a good neighbor and does not want him to move because he cannot secure his property and is in need of more space. Mr. Fulton noted his property would be the most affected and asked the zoning board for approval; noted he does not understand that if the neighbors have approved why they cannot do what they want.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE APPEAL #Z-10-11 FOR A VARIANCE TO ALLOW CONSTRUCTION OF AN ADDITION TO EXISTING ACCESSORY BUILDING AS REQUESTED ON THEIR APPLICATION; SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. Greg Dunn stated he understands the petitioners need, but feel they need to uphold the guidelines of the ordinance and wished the petitioner well and cannot support their request.

Mr. Deland Davis stated the intent of the ordinance is that properties not overbuild upon their lots and that in the future there may be different owners for the property and also neighboring properties.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; NONE IN FAVOR; ALL OPPOSED, MOTION FAILED.

Mr. John Stetler stated the variance request has been denied and noted the petitioner has the option to appeal to the Circuit Court if they wished to do so.

- C. **Presentation from Legal Department:** Ms. Jill Steele, Deputy City Attorney reviewed the legal standards for the Zoning Board of Appeals to consider when making a decision on appeals. Ms. Steele explained the Michigan Zoning Enabling Act, Act 110 of 2006 and the changes noted in the Act. (Provided a hand-out to the board of the Act) and reviewed with the board some examples of cases of court decisions regarding appeals.

Mr. John Stetler referred to training he recently received that said if they have a conflict of interest; they should abstain and leave the room because of any possible body language.

Ms. Jill Steele stated she did not feel it was necessary to leave the room as long as the person could control their actions.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE JULY 12, 2011 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. DELAND DAVIS ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Greg Dunn made reference to an appeal that was approved in the recent past regarding a porch addition for a lake parcel. Said after the meeting he found documentation on the internet of a circuit court case that was denied because “living on a lake is not a practical difficulty” and that he would have voted no if he was aware of this other case. Mr. Dunn asked if in the future he would like to see a ruling from circuit court of other similar cases as examples.

Mr. Carlyle Sims stated that each appeal should be addressed per their case and are all different. Regarding the appeal today for the garage; it would be setting precedence for the neighborhood. Mr. Sims thanked staff for getting the reports to the board in enough time for them to review prior to the hearing.

Ms. Jill Steele noted that the City Attorney’s office does not do the staff reports and are not responsible for them; noted she also did not agree with the decision for the property on the lake requesting the porch.

Mr. John Stetler stated that particular lake property appeared to be missing something and needed the porch for its appearance.

Ms. Christine Hilton stated future appeal forms will be more thorough so applicants may better understand what is required in order to meet the standards for an appeal.

Mr. Greg Dunn said they should rarely see an appeal that should not have come before them.

Ms. Hilton stated they do meet with persons submitting the petition and cannot say that they all should be approved that come before them.

Mr. John Stetler asked if they could see the revised application in draft form before submitted. Ms. Hilton stated yes, the Attorney's Office will review it also. Ms. Hilton asked the board to also note anything that they might want to have added to the appeal form application.

Mr. Davis stated it is a good idea to review the application for changes. Stated the Deputy Attorney provided good Circuit Court examples and feel they were helpful.

ADJOURNMENT: Mr. John Stetler made a motion for the meeting to be adjourned; all stated in favor, meeting was adjourned at 5:14 P.M.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department